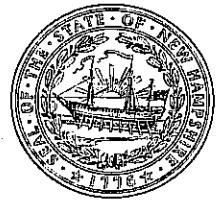




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

March 31, 2009

The Honorable Judith T. Spang, Chair  
Resources, Recreation and Development Committee  
Legislative Office Building, Room 305  
Concord, NH 03301

**RE: HB 28-FN, relative to annual dam registration fees for non-menace dams and notification to dam owners of downstream development.**

Dear Chairman Spang:

Thank you for the opportunity to testify in favor of HB 28-FN.

As originally introduced in the Senate, the bill would amend RSA 482:8-a to exempt from Annual Dam Registration Fees those dams that the Department of Environmental Services (DES) classifies as non-menace dams, regardless of the hazard classification of the dams designated by the Federal Energy Regulatory Commission (FERC). In the Senate, the bill was amended to also require that, for proposed developments near rivers and streams and downstream of a dam, the local planning board shall send notification of the proposed development to the owner of the upstream dam and the DES Dam Bureau. This is because construction of any structure near streams or rivers downstream of a dam can increase the hazard classification of the dam, which would increase the performance standards, as well as the Annual Dam Registration Fee, for the dam.

The Annual Dam Registration Fee was first introduced by the legislature in 1990 to partially fund the cost of inspecting, on a schedule based on hazard classification, the 842 dams in New Hampshire that could cause loss of life or property damage if they were to fail. There are currently 3,076 dams in New Hampshire. Of these, 2,234 dams are classified by DES as non-menace dams. Because of the small size of these dams and the lack of development downstream, the failure or misoperation of these dams would not cause loss of life or property damage downstream. Unlike the 842 dams that could cause loss of life or property damage if they were to fail, these non-menace dams are not subject to an Annual Dam Registration Fee.

In 2007 the legislature enacted HB 664 (Chapter 329, Laws of 2007) which set the Annual Dam Registration Fees at \$1,500 for a High Hazard Dam, \$750 for a Significant Hazard Dam, and \$400 for a Low Hazard Dam. During the hearings on the bill, one of the concerns raised by the Granite State Hydropower Association, a trade association for the small independent hydroelectric industry in New Hampshire, was that the safety of the hydropower dams in the state was also regulated by FERC, and, for some dams, the hazard classifications assigned by FERC were different than those determined by DES. To address this concern, HB 664 was amended to require that, for the 102 FERC-regulated dams in New Hampshire, the Annual Dam Registration Fee would be based on the hazard classification designated by FERC. Since FERC does not have a "non-menace" classification, one of the results of this amendment

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was that the hazard classification of eight FERC-regulated dams, which DES had classified as non-menace, were changed to Low Hazard to be consistent with the FERC classification. These dams, which were never subject to an Annual Dam Registration Fee as non-menace dams before enactment of HB 664, are now subject to an Annual Dam Registration Fee of \$400.

Under HB 28-FN, the eight FERC-regulated dams that DES has determined to be non-menace dams will be treated the same as the other 2,228 non-menace dams in the state and not subject to an Annual Dam Registration Fee until the hazard classification changes as a result of new information on the downstream impacts from failure of the dam.

Currently, DES periodically visits non-menace dams to make sure that no development has taken place downstream, which would change the hazard classification. However, under the amendment approved by the Senate, notification of any proposed development downstream of a dam would be provided to both DES and the dam owner by the local planning board when the board is considering the application for the development. In this way, the hazard classifications established by DES for the dams in the state will be more current, and the dam owner will be aware of the effect of the proposed downstream development on the dam's hazard classification before the development is constructed.

Thank you for the opportunity to comment on this bill. Please call either me at 271-2958, or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael Wells, Asst Comm", is written over the typed name of Thomas S. Burack.

Thomas S. Burack  
Commissioner

cc: Senator John T. Gallus  
Senator Deborah Reynolds  
Representative William Remick  
Representative Herbert Richardson  
Representative Paul Ingersoll  
Representative Eric Stohl  
Representative Evalyn Merrick